IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8103 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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HAMIDABEN NATHABHAI PATANI - Petitioner
Versus
ADMINISTRATOR,BEST ENGLISH SCHOOL & 1 - Respondents

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Appearance :
MR HRIDAY BUCH for Petitioner.
RULE SERVED for Respondent No. 1.
MR MEHUL S SHAH for Respondent No. 2.
MR SURESH M SHAH for Respondent No. 2.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 20/11/2006
ORAL JUDGMENT

1. The petitioner – original plaintiff has filed this petition under Article 226 & 227 of the Constitution of India challenging the order dated 11.04.2005 passed by the learned Civil Judge (J.D.), Dhari below an application Exh. 64 in Regular Civil Suit No. 83 of 2000 whereby the Learned Trial Judge has allowed the application moved by the third party to be joined as party to the suit.

2. This Court has admitted the petition and rule was issued on 12.05.2005 and proceedings before the Trial Court were stayed.

3. Heard Mr. Hriday Buch, learned advocate appearing for the petitioner and Mr. Mehul S. Shah, learned advocate appearing for the respondent No. 2. Despite service of rule on respondent No. 1, nobody appears on his behalf.

4. It is the case of the petitioner that the petitioner became owner of a building constructed on Plot Nos. 45-C and 46-C, admeasuring about 564 Sq. Yrds. bearing Panchayat Block No. 79/4 in “Gamtal” of village Dhari. The respondent No. 1 was a tenant of the disputed property since 1983 and right from the year 1988, rent was paid to the petitioner by respondent No. 1 in view of the sale deed executed on 12.08.1988. The respondent No.1 stopped paying rent to the petitioner on and from 01.05.2000. Since the rent was not paid consequently for the period of six months by the respondent No. 1 to the petitioner, a notice was served on 14.10.2000 by the petitioner through her lawyer to respondent No. 1 as per the provisions contained in Section 12(3)(a) of the Bombay Rents Hotel & Lodging Houses Rates Control Act, 1947. The petitioner thereafter preferred a suit for eviction in the Court of learned Civil Judge (J.D.), Dhari being Regular Civil Suit No.83 of 2000 as per the provisions of Section 28 of the Rent Act.

5. In the said suit, the respondent was duly served and appeared through advocate. Neither the amount of rent outstanding was deposited in the Court nor the proceedings for fixing the standard rent were initiated by the respondent No.1. The petitioner, therefore, made an application below Exh. 9 requesting the Court to strike off defence of respondent No. 1. Instead of filing written statement and reply to the said application, the respondent No. 1 preferred an application Exh. 14 raising a preliminary issue about title of the petitioner to the suit property. The respondent No.2 in support of the application of the respondent No. 1 submitted an affidavit on 28.08.2001 in the Civil Court at Exh. 25 contending that she has become the owner of the disputed property on and from 05.03.1992 along with one Laduben Karmanbhai Madviya. Both the applications Exh. 9 & 14 came to be heard by the learned Civil Judge (J.D.), Dhari on 17.10.2001. Application preferred by the petitioner below Exh. 9 came to be allowed and the application preferred by

respondent No. 1 raising preliminary objection Exh. 14 came to be rejected. Civil Revision Application No. 01 of 2001 was filed by the respondent No. 1 in the District Court challenging the order below Exh. 9 and the said revision application came to be partly allowed.

6. At the time of evidence of the petitioner, the respondent No. 1 wanted to cross-examine the petitioner and, therefore, the petitioner made an application on 21.07.2004 to the effect that the respondent No. 1 should not be permitted to cross-examine the petitioner as respondent No. 1's right to defence is struck off. At this stage, the respondent No. 2 submitted an application at Exh. 64 on 13.09.2004 for being joined as party in the suit. The petitioner raised detailed objections with regard to maintainability of such application on various grounds. The said application at Exh. 64 is allowed by the learned Civil Judge (J.D.), Dhari on 11.04.2005 and the respondent No. 2 was permitted to be joined as plaintiff No. 2 to the suit.

7. It is this order which is under challenge in the present petition.

8. Mr. Hriday Buch, learned advocate appearing for the petitioner has submitted that the Learned Trial Judge has failed in appreciating the provisions in Order I, Rule 10 (2) of the Code which empowers the Court to add and/or struck off a party. The said power is conferred upon the Court only if the Court considers that joining party is necessary for effective and complete adjudication of the dispute involved in the suit. In the present case, the issue involved in the suit is with regard to eviction and with regard to arrears in rent. The suit is under the provisions of the Rent Act. Therefore, joining of respondent No. 2 was not at all necessary as the alleged dispute with regard to title can be decided by the Civil Court. Because of joining of respondent No. 2, the scope of the suit would certainly be changed and the issue will be with regard to title of the property. The basic issues about the arrears of rent and eviction will

become subsidiary. He has, therefore, submitted that the Learned Trial Judge, in exercise of his powers without considering the aforesaid aspect, has granted the application which is not sustainable at law and hence, the impugned order deserves to be quashed and set aside.

9. Mr. Buch has further submitted that the respondent No. 2 is neither a necessary nor proper party. The issue involved in the suit is with regard to arrears of rent and eviction. The said issue can certainly be resolved and adjudicated even in absence of respondent No. 2. Therefore, there is no need for respondent No. 2 to be joined as party – plaintiff No.2 in the suit and on this ground alone, the impugned order is required to be quashed and set aside.

10. Mr. Buch has further submitted that the Learned Trial Judge while passing the impugned order has failed in appreciating the provisions contained in Rule 10 (3) of Order I of the Code. The said

provision states that "*No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent*." In view of this provision, the Learned Trial Judge ought not to have added respondent No. 2 as plaintiff No. 2 in the suit. He has, therefore, submitted that the impugned order is required to be quashed and set aside.

11. Mr. Buch has further submitted that while passing the impugned order, the Learned Trial Judge has lost sight of the settled legal position that the plaintiff is a "*dominus litus*". In the present case, the petitioner has objected about joining respondent No. 2 in the suit in any capacity. Without considering the said objection, the Learned Trial Judge has, on the contrary, joined respondent No. 2 as plaintiff No. 2 and has thereby committed miscarriage of justice.

12. Mr. Buch has further submitted that no proceedings have ever been initiated by respondent No. 2 about title. It is very well evident from the record of the

case that respondent No. 2 was aware that the petitioner was claiming title over the disputed property. The respondent No. 2 even filed an affidavit on 28.08.2001 stating that she was the owner of the disputed property. Therefore, on and from that day, at least, it can safely be presumed that she was aware about the dispute. However, for a period of three years thereafter, no proceedings whatsoever have been initiated by respondent No. 2. It is only on 13.09.2004, an application was made and since it was filed at belated stage, it should not have been entertained by the Learned Trial Judge. The respondent No. 2 is otherwise not entitled to raise any issue about title in view of provisions contained in the Limitation Act, 1963 and more particularly, in Article 58 and/or Article 113 of the said Act. He has, therefore, submitted that the respondent No. 2 should not have been permitted to achieve goal indirectly, which the said respondent was otherwise not entitled to in view of mandatory provisions contained in the Limitation Act. Though this issue was raised by the petitioner, there was no

discussion whatsoever in the order of the Learned Trial Judge. Hence, the impugned order passed by the Learned Trial Judge is required to be quashed and set aside.

13. Mr. Buch has further submitted that the respondent No. 2 is the sister-in-law of the administrator of respondent No. 1. Therefore, it can safely be presumed that purpose of civil suit filed for eviction by the petitioner is sought to be frustrated/stalled by making such frivolous and vexatious application. The conclusion arrived at by the Learned Trial Judge that the respondent No. 2 is proper and necessary party to avoid multiplicity of proceedings, is absolutely illegal and erroneous as there was no reason for multiplicity of any proceedings because all the proceedings seeking title over the disputed property at the instance of respondent No. 2 are barred by the provisions of Limitation Act, 1963. Even on this ground also, the impugned order is required to be quashed and set aside.

14. Mr. Mehul S. Shah, learned advocate appearing for the respondent No. 2 has strongly supported the order passed by the Learned Trial Judge. He has submitted that the present petition is filed under Article 227 of the Constitution of India challenging the discretionary order passed by the Learned Trial Judge permitting the third party to be joined as plaintiff No. 2. The order passed therein is a discretionary one and in view of the provisions contained in Order 1, Rule 10 of the Civil Procedure Code, the said discretion was judicially exercised. It cannot, therefore, be assailed or interfered with by this Court while exercising powers under Article 227 of the Constitution of India. He has further submitted that Order 1, Rule 10 (2) makes it clear that the Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or

defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added. Based on this Rule, he has submitted that the respondent No. 2 is claiming to be the owner of the suit property. The sale deed with regard to the suit property is executed in her favour. By virtue of the said sale deed, she becomes the absolute owner of the property. She is, therefore, entitled to recover the rent from the respondent No. 1. In absence of respondent No. 2, the issue raised before the Court cannot be effectually and completely adjudicated upon or the Court can not settle all the questions involved in the suit. If the respondent No. 2 is joined as a party, no prejudice would be caused to the petitioner. The Learned Trial Judge while granting the application has clearly held that respondent No. 2 is required to be joined as party to the suit and in absence of respondent No. 2, if the decree is passed in favour of the petitioner, the respondent No. 2 would certainly be affected by virtue of that decree.

Mr. Shah has, therefore, submitted that the impugned order is absolutely in accordance with the provisions contained in the Civil Procedure Code and also in the larger interest of justice. This Court should not, therefore, interfere with the said order.

15. After having heard learned advocates appearing for the respective parties and after having gone through the memo of the petition, the impugned judgment and the documents attached with this petition, the Court is of the view that though there is a substance in the arguments canvassed on behalf of the petitioner, no third party can be joined as plaintiff against the wish of the existing plaintiff and that too when their interests are in conflict with each other. The Court is not inclined to interfere in the order passed by the Learned Trial Judge, save and except the direction to the Learned Trial Judge to join respondent No. 2 as a party – defendant No. 2 instead of party – plaintiff No. 2 in the said suit. By joining the third party i.e. respondent No. 2 in the pending suit, it cannot be said that the respondent

No. 2 has established her ownership rights to the property nor it can be said that any decree be necessarily passed in her favour. It is also a settled proposition in law that title to the property cannot be decided by the rent Court. For this purpose, the parties must approach the Civil Court to establish their rights over the property. The present suit for eviction and arrears of rent can be decided by the Trial Court only after considering the rival claims of the parties. However, no view can be expressed by the Trial Court with regard to the ownership of the property. The relief sought for in the plaint of the suit can be decided by the Trial Court on the basis of the evidence, oral as well as documentary, led before the Court and for determination of the controversy between the parties, the presence of respondent No.2 is necessary. However, it would be in the fitness of the things that the respondent No. 2 may be joined as defendant No. 2 in the suit and not as plaintiff No.2 as done by the Learned Trial Judge.

16.In the above view of the matter, the petition is

partly allowed. Rule is made absolute to the above extent without any order as to costs.

[**K.A. PUJ, J.**]

S*avariya*